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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,858	02/27/2004	Julio Casanova	SP-1785.1US	8485
20875	7590	08/22/2006	EXAMINER	
MICHAEL C. POPHAL EVEREADY BATTERY COMPANY INC 25225 DETROIT ROAD P O BOX 450777 WESTLAKE, OH 44145			LUONG, SHIAN TINH NHAN	
		ART UNIT	PAPER NUMBER	
		3728		
DATE MAILED: 08/22/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/789,858	CASANOVA, JULIO	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shian T. Luong	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 22 June 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-41 is/are pending in the application.  
4a) Of the above claim(s) 15-18 and 35-38 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-14, 19-34 and 39-41 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/2/04, 8/26/05.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

***Election/Restrictions***

1. Claims 15-18 and 35-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/22/06.

***Claim Rejections - 35 USC § 112***

2. Claims 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 23, the claim requires a lid to be placed over the second face of the base of each module. However, in the independent claim 22 from which claim 23 depends from, the modules have already been placed within the cover. It would appear that the modules have to be removed from the cover before a lid can be placed thereon.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3,5,10-14,19-20,22-23,25,30-34,39-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Getz et al. (US 5,957,358). Getz et al. discloses a plurality of battery packages within a cover or container. Each four or five batteries is considered a module. As shown in Figure 6, the battery in one of the modules is situated between the space of two

batteries in another module. The two separate modules are easily separable upon removal of the cover.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Getz et al. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container out of transparent material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 6-9,26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Getz et al. in view of Miller (WO/01/98171). Getz et al. does not disclose non-rotation feature and a card positioned over the module. However, Miller discloses a display package that houses batteries. The package has a base and first and second faces. A pocket is formed on the base. A lid is placed over the second face of the base and a card 14 is over the lid. Miller also has a non-rotation feature 76,78 to prevent rotation of the batteries. It would have been obvious in view of Miller to provide non-rotational feature to prevent movement of the batteries. It would also have been obvious to provide a card over the lid to strengthen the compartments and to provide advertising information.

8. Claims 21 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Getz et al. in view of Official Notice. Although Getz et al. does not disclose a shrink wrap plastic cover, it is notoriously known in the art to provide shrink wrap to cover the packages into one unit. It would have been obvious in view of Official Notice to provide shrink wrap material as a cover to surround the packages.

9. Claims 1,3-4,6-14,20,22-24,26-34,40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (WO/01/98171) in view of Kallgren (US 6,253,920) and Getz et al. (US 5,957,358). Miller discloses a display package that house batteries. The package has a base and first and second faces. A pocket is formed on the base. A lid is placed over the second face of the base and a card 14 is over the lid. Miller has a non-rotation feature 76,78 to prevent rotation of the batteries. However, Miller does not disclose a cover or stacking of two or more packages. Getz et al. discloses a plurality of battery packages within a cover or container. Each four or five batteries are considered a module. As shown in Figure 6, the battery in one of the modules is situated between the space of two batteries in another module. This is to maximize the volume of the container. The two separate modules are easily separable upon removal of the cover. Kallgren also teaches a blister pack with a plurality of compartments formed by a base and a cover. The blister packs are separated at 9 and is considered as two modules. The modules overlap one another. It would have been obvious in view of Kallgren and Getz et al. to overlap the compartments to maximize the volume within the cover.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 1, further in view of Official Notice.

With respect to claim 2, more than two modules are conventionally stored within a container or cover for shipment purposes. Hence, having three modules in a container is not a new feature in the art.

11. Claims 21 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claims 1 and 22, further in view of Official Notice. Although Miller does not disclose a shrink wrap plastic cover, it is notoriously known in the art to provide shrink wrap to cover the packages into one unit. It would have been obvious in view of Official Notice to provide shrink wrap material as a cover to surround the packages.

12. Claims 1,3-5,10-11,13-14,19,20,22-25,30,31,33-34,39,40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kumakura et al (US D479,126) in view of Kallgren (US 6,253,920) and Getz et al. (US 5,957,358). Kumakura et al. discloses a display package that house batteries. The package has a base and first and second faces. At least one pocket is formed on the base. A lid is placed over the second face of the base. Kumakura et al. does not disclose a cover or stacking of two or more packages. However, Getz et al. discloses a plurality of battery packages within a cover or container. Each four or five batteries are considered a module. As shown in Figure 6, the battery in one of the modules is situated between the space of two batteries in another module. This is to maximize the volume of the container. The two separate modules are easily separable upon removal of the cover. Kallgren also teaches a blister pack with a plurality of compartments formed by a base and a cover. The blister packs are separated at 9 and is considered as two modules. The modules overlap one another. It would have been obvious in view of Kallgren and Getz et al. to overlap the compartments to maximize the volume within the cover

13. Claims 2 and 12,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claims 1 and 22, respectively, further in view of Official Notice.

With respect to claim 2, more than two modules are conventionally stored within a container or cover for shipment purposes. Hence, having three modules in a container is not a new feature in the art.

With respect to claims 12 and 32, it would have been obvious to provide more compartments to store more batteries.

14. Claims 6-9 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claims 1 and 22, respectively, further in view of Miller (WO/01/98171). Miller discloses a display package that house batteries. The package has a base and first and second faces. A pocket is formed on the base. A lid is placed over the second face of the base and a card 14 is over the lid. Miller has a non-rotation feature 76,78 to prevent rotation of the batteries. It would have been obvious in view of Miller to provide non-rotational feature to prevent movement of the batteries. It would also have been obvious to provide a card over the lid to strengthen the compartments and to provide advertising information.

15. Claims 21 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claims 1 and 22, further in view of Official Notice. Although Kumakura et al. does not disclose a shrink wrap plastic cover, it is notoriously known in the art to provide shrink wrap to cover the packages into one unit. It would have been obvious in view of Official Notice to provide shrink wrap material as a cover to surround the packages.

***Conclusion***

16. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.

For applicant's convenience, the official FAX number is 571-273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST. The examiner's supervisor Mickey Yu can be reached at (571) 272-4562 for urgent matters.

STL  
August 19, 2006



Primary Examiner  
Shian Luong  
Art Unit 3728